

**DALAM MAHKAMAH TINGGI DI IPOH  
DALAM NEGERI PERAK DARUL RIDZUAN  
RAYUAN SIVIL NO. : AA-12ANVC-2-03/2022**

**ANTARA**

**1. ONG YEONG**

*(No. K/P: 691126-08-5704)*

**2. LIM WEI CHET**

*(No. K/P: 901104-07-5567)*

**... PERAYU-PERAYU**

**DAN**

**MANHATTAN MANAGEMENT SDN. BHD.**

*(No. Syarikat: 58179-U)*

**... RESPONDEN**



**DALAM MAHKAMAH SESYEN (1) DI IPOH  
DALAM NEGERI PERAK DARUL RIDZUAN  
GUAMAN SIVIL NO. : AA-A52NCVC-210-12/2019**

**ANTARA**

**1. ONG YEONG**

*(No. K/P: 691126-08-5704)*

**2. LIM WEI CHET**

*(No. K/P: 901104-07-5567))*

**... PLAINTIF-PLAINTIF**

**DAN**

**1. MANHATTAN MANAGEMENT SDN. BHD.**

*(No. Syarikat: 58179-U)*

**2. NORHAYATI BINTI NGAH AHMAD**

*(No. K/P: 680611-08-5464)*

*[Berniaga sebagai rakan kongsi di bawah  
nama dan gaya FARTISHA ENTERPRISE  
(IP0211095-M)]*

**3. MOHAMMAD IZZUL SHAFIQ BIN MAT JAAFOR**

*(No. K/P: 911014-01-5607)*

*[Berniaga sebagai rakan kongsi di bawah  
nama dan gaya FARTISHA ENTERPRISE  
(IP0211095-M)]*

**... DEFENDAN-DEFENDAN**



## GROUNDS OF JUDGMENT

### Background

There are two applications filed in this suit. In Enclosure 47, plaintiff filed an application Under Order 14A, Order 33A rule 2 and/or Order 92 rule 4 Rules of Court 2012 for the determination of questions and issues on plaintiffs' claim as follows;

- a) Whether 1<sup>st</sup> defendant had delivered vacant possession via their letter dated 3/1/2019;
- b) Whether 1<sup>st</sup> defendant is a tenant holding over for premises No. 42 and No. 42B;
- c) Whether plaintiffs' mesne profit claim is inapplicable against 1<sup>st</sup> defendant when plaintiffs' had unconditionally accepted the rental paid by 2<sup>nd</sup> and 3<sup>rd</sup> defendant.

Plaintiffs in turn filed Enclosure 49. Plaintiffs are seeking to amend their writ and Statement of Claim on the ground that they discovered new development of facts.



As this court is of the view that both enclosures are inter related, it was instructed for both enclosures to be heard together. Affidavits from both parties were considered and the following orders were made;

Enclosure 47: - Allowed with costs RM4,000. Plaintiffs' claim dismissed with costs.

Enclosure 49: - Dismissed with costs RM4,000.

Aggrieved, plaintiffs appealed to the High Court on both enclosure.

Findings on Enclosure 47;

Plaintiffs and 1<sup>st</sup> defendant entered into a tenancy agreement for a two years period from 1/2/2017 to 31/1/2019 for the monthly rental of RM8,050. In the agreement, 1<sup>st</sup> defendant is expressly allowed to sublet the premises. Thus premise No. 42 and 42B were let out to Fartisha Enterprise and Vapor Bro.

The principle tenancy agreement between plaintiffs and 1<sup>st</sup> defendant ended on 31/1/2019. This is confirmed via 1<sup>st</sup> defendant letter to plaintiffs dated 3/1/2019 and plaintiffs' reply letter dated 29/1/2019.





As for the sublet, the tenancy of 2<sup>nd</sup> and 3<sup>rd</sup> defendant which ended on 6/12/2018 was extended for two years to 31/12/2020 at the request of 2<sup>nd</sup> and 3<sup>rd</sup> defendant. The extension was made with plaintiffs' knowledge. Plaintiffs thereafter collected rental from 2<sup>nd</sup> and 3<sup>rd</sup> defendant without fail until the extension ended.

a) Whether 1<sup>st</sup> defendant had delivered vacant possession

The 1<sup>st</sup> defendant had written a letter dated 3/1/2019 to the plaintiffs to confirm that the principle tenancy ended on 31/1/2019. As for the tenancy of 2<sup>nd</sup> and 3<sup>rd</sup> defendant, it was extended because plaintiffs continue to collect rental from them until the extension ended. Thus the issue that arises is whether 1<sup>st</sup> defendant can hand over vacant possession when 2<sup>nd</sup> and 3<sup>rd</sup> defendant continue to occupy the end premises.

In order to resolve this issue, this court referred to the terms of the principle tenancy agreement. In clause 11(4), it is provided "... *that the Tenant shall be absolutely entitled to assign or sub-let or part with the possession of the said Premises...*". Thus, 1<sup>st</sup> defendant had acted within its powers to sub let the premises to 2<sup>nd</sup> and 3<sup>rd</sup> defendant. Thereafter when the principle tenancy agreement ended, plaintiffs



continued with the sub let arrangement with the 2<sup>nd</sup> and 3<sup>rd</sup> defendant. This can be inferred from the conduct of the plaintiff in collecting the rentals.

Clause 111(8) provides for the delivery of vacant possession. The tenant must “... *notify the Landlord in writing to the last known address and Landlord must take possession and keys within fourteen days from the date of notice.*”

It is also provided that “*Possession and keys of the said premises shall be deemed to have been taken... upon the expiry of fourteen days.*”

As required by the above clause, 1<sup>st</sup> defendant wrote on 14/5/2019 to plaintiffs to take vacant possession and the keys of the premises. However they did not take any action. Only after eight months did the plaintiffs issued Notice of Demand to the defendants. At the same time, plaintiffs continued to collect the rental payments.

b) Whether 1<sup>st</sup> defendant is a tenant holding over



Plaintiffs claimed for double rental as provided in Section 28(4)(a) of Civil Law Act 1956. In the case of **Rohasassets Snd. Bhd. (formerly known as Wisma Perkasa Sdn Bhd) V Weatherford (M) Sdn Bhd & Anor [2020] 1 MLJ 557**, the Federal Court observed that under Section 28(4)(a) of Civil Law Act, double rental is only chargeable “... *if the Landlord has made his intention clear to the Tenant that he does not wish to renew the tenancy and will not allow the Tenant to hold over after the expiry of the tenancy.*” The Federal Court further stated that “... *whether they were holding over with or without the Appellant’s consent, express or implied by conduct.*” Appellant accepted the rental payments from the Respondent during negotiation and only after the negotiation failed that Appellant issued notice to quit. Hence, Appellant is not entitle to double rental.

Similarly, in this present case, although 1<sup>st</sup> defendant had written to plaintiff to collect the keys, plaintiffs did not respond. Instead plaintiffs continue to collect rental for premises No. 42 and 42B. Thus plaintiffs is now estopped from claiming double rental. Plaintiffs did not show intention either expressed or implied to terminate the tenancy. As for the 1<sup>st</sup> defendant, they had paid the full rental amount





of RM193,200 for the principle rental agreement. Thus, this court found that 1<sup>st</sup> defendant is not a tenant holding over.

c) Mesne profit claim

Plaintiffs claim mesne profit against 1<sup>st</sup> defendant for the tenancy extension of 2<sup>nd</sup> and 3<sup>rd</sup> defendant. It is not disputed that plaintiffs have collected rentals from 1<sup>st</sup> defendant for the sum of RM193,200 for the principle tenancy agreement and from 2<sup>nd</sup> and 3<sup>rd</sup> defendant for the sum of RM58,200 for the extension of tenancy agreement.

As this court has pointed earlier, the tenancy of 1<sup>st</sup> defendant had ended and plaintiffs had accepted the termination of tenancy agreement between plaintiffs and 1<sup>st</sup> defendant. However, the tenancy of 2<sup>nd</sup> and 3<sup>rd</sup> defendant was extended. Based on these facts, this court found that plaintiffs' claim for mesne profit is an afterthought. At all relevant time, plaintiffs never took steps to take vacant possession of the premises, except for the notice of demand issued by their solicitors on 12/9/2019.

After filing this suit against defendants, plaintiffs continued to collect rentals from 2<sup>nd</sup> and 3<sup>rd</sup> defendant until December 2020.





Plaintiffs denied collecting the rentals and instead claimed that defendants had unilaterally deposit monies into plaintiffs' account. This court rejects plaintiffs' assertion. This defies logic. Surely plaintiffs are in control of their own account.

Hence, this court found that plaintiffs' claim for mesne profit is an afterthought and of without basis.

Decision of Enclosure 47

*Allowed with costs RM4,000. Plaintiffs' claim is dismissed.*

Findings on Enclosure 49;

After 1<sup>st</sup> defendant made the application for the determination of preliminary issued in Enclosure 47, plaintiffs filed this application to amend their Writ and Statement of Claim. As this court has stated earlier, both enclosures were heard together since they are inter related.

The principle of amendments of pleadings was laid down by in the Federal Court in the landmark case of **Yamaha Motor Co Ltd V Yamaha**



**(M) Sdn Bhd [1983] 1 MLJ 213.** The basic questions for determination are;

- i) The application is bona fide;
- ii) Whether prejudice suffered can compensated by costs;
- iii) The amendment would not turn the suit from one character into another.

From the background of this case as laid down by this court earlier, it is crystal clear that plaintiff filed this application to defeat 1<sup>st</sup> defendant's application in Enclosure 47. This court found plaintiffs' application lack bona fide and will cause grave injustice to 1<sup>st</sup> defendant.

Furthermore, this court found that plaintiffs are trying to save their pleadings when they are to be blamed for the weak and inconsistent claim. This suit was filed carelessly and has caused prejudice against 1<sup>st</sup> defendant which cannot be compensated by costs. 1<sup>st</sup> defendant has taken all the necessary steps to fulfill their obligation in the principle tenancy agreement.



Decision on Enclosure 49

*Dismissed with costs RM4,000.*

**DATED : 16<sup>th</sup> MARCH 2022**

.....  
**(MEOR SULAIMAN BIN AHMAD TARMIZI)**  
**JUDGE**  
**CIVIL SESSIONS COURT**  
**IPOH**



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**Solicitors:**

<i>On behalf of Plaintiffs</i>	<i>: Messrs. Lim Tan &amp; Co.</i>
<i>On behalf of 1<sup>st</sup> Defendant</i>	<i>: Messrs. Selvam, Nanda &amp; Partners</i>
<i>On behalf of 2<sup>nd</sup> Defendant</i>	<i>: Messrs. Gibb &amp; Co.</i>



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